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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE SUNPOWER SECURITIES
LITIGATION

Case No. CV 09-5473-RS (JSC)
(Consolidated)

CLASS ACTION

**LEAD PLAINTIFFS' NOTICE OF
MOTION AND MOTION FOR AN
AWARD OF ATTORNEYS' FEES AND
REIMBURSEMENT OF LITIGATION
EXPENSES; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Judge: Hon. Richard Seeborg
Courtroom: 3, 17th Floor
Date: July 3, 2013
Time: 3:00 p.m.

NOTICE OF MOTION AND MOTION

PLEASE TAKE NOTICE that on July 3, 2013, at 3:00 p.m. in Courtroom 3 of the United States District Court for the Northern District of California, United States Courthouse, 450 Golden Gate Ave., San Francisco, California, the Honorable Richard Seeborg, United States District Judge, presiding, Lead Counsel will and hereby do move for an Order pursuant to Rule 23 of the Federal Rules of Civil Procedure: (i) awarding attorneys' fees in the amount of 25% of the Settlement amount, net of Court-approved Litigation Expenses; and (ii) reimbursement of \$483,859.23 in out-of-pocket expenses that Lead Counsel incurred in connection with prosecuting and resolving the above-captioned action (the "Action"), plus interest earned on these amounts at the same rate and for the same period as earned by the Settlement Fund.

This motion is based upon this Notice of Motion and Motion, the Memorandum of Points and Authorities set forth below; the accompanying Joint Declaration of Laurence D. King, David R. Stickney, and Ramzi Abadou in Support of Motion for Final Approval of Settlement and Plan of Allocation, and Motion for Approval of Attorneys' Fees and Reimbursement of Litigation Expenses and the exhibits thereto; the Stipulation of Settlement dated February 1, 2013 (the "Stipulation," ECF No. 248); the pleadings and records on file in this Action; and other such matters and argument as the Court may consider at the hearing of this motion.

The deadline for filing any objections to Lead Counsel's request for attorneys' fees and reimbursement of Litigation Expenses expires on June 12, 2013. Lead Counsel will address any objection that may be filed, if any, and also submit a proposed fee order, in connection with their Reply brief to be filed on or before June 26, 2013.

STATEMENT OF ISSUES TO BE DECIDED (Civil L.R. 7-4(a)(3))

1 1. Whether the requested attorneys' fees in the amount of 25% of the Settlement
2 amount net of Court-approved Litigation Expenses, plus interest thereon, is fair and reasonable.

3 2. Whether the requested reimbursement of Litigation Expenses, plus interest
4 thereon, is fair and reasonable.
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MEMORANDUM OF POINTS AND AUTHORITIES

Due to their considerable efforts over the past 3-plus years, Court-appointed lead counsel, Bernstein Litowitz Berger & Grossmann LLP (“BLB&G”), Kaplan Fox & Kilsheimer, LLP (“Kaplan Fox”), and Kessler Topaz Meltzer & Check, LLP (“KTMC”) (collectively, “Lead Counsel”), have succeeded in obtaining a Settlement for \$19.7 million in cash (“Settlement Amount”) for the benefit of the Settlement Class.¹ Lead Counsel, with the approval of the Court-appointed lead plaintiffs Arkansas Teacher Retirement System, Första AP-fonden, and Danske Invest Management A/S (“Lead Plaintiffs”), respectfully submit this Memorandum of Points and Authorities in support of their motion for an award of attorneys’ fees and Litigation Expenses. In consideration of Lead Counsel’s efforts and the recovery obtained for the Settlement Class in light of the significant risks discussed herein, Lead Counsel respectfully move the Court for: (i) an award of attorneys’ fees in the amount of 25% of the Settlement Amount, net of Court-approved Litigation Expenses, plus interest, and (ii) reimbursement of Litigation Expenses reasonably and necessarily incurred by Lead Counsel in prosecuting and resolving the Action in the amount of \$483,859.23, plus interest.

I. PRELIMINARY STATEMENT

As set forth below and in the accompanying Joint Declaration of Laurence D. King, David R. Stickney, and Ramzi Abadou in Support of Motion for Final Approval of Settlement and Plan of Allocation, and Motion for Approval of Attorneys’ Fees and Reimbursement of Litigation Expenses (the “Lead Counsel Declaration” or “Lead Counsel Decl.”), the \$19.7 million recovery is particularly significant in light of the substantial legal challenges the Settlement Class would face had the Action continued, in addition to real uncertainties surrounding Defendants’ ability to fund a future settlement or judgment in an amount greater than the present Settlement Amount.

¹ Capitalized terms not defined herein shall have those meanings ascribed to them in the Stipulation of Settlement dated February 1, 2013 (the “Stipulation”). Pursuant to the Stipulation, the \$19.7 million was deposited into an escrow account on April 5, 2013, and has been earning interest for the benefit of the Settlement Class.

1 The \$19.7 million recovery obtained for the Settlement Class would not have been
2 possible without the skill, tenacity and advocacy of Lead Counsel, who devoted over three years
3 to the investigation, vigorous prosecution and resolution of this Action on a wholly contingent
4 basis. In doing so, Lead Counsel, among other things: (i) conducted an extensive factual
5 investigation into the alleged fraud, including a thorough review of publicly available
6 information regarding SunPower Corporation (“SunPower” or the “Company”) such as the
7 Company’s filings with the U.S. Securities and Exchange Commission (“SEC”), financial
8 statements, press releases and analysts’ reports; (ii) conducted detailed investigative interviews
9 (and follow-up interviews in some cases) of potential witnesses, including former SunPower
10 employees located in the U.S. and the Philippines; (iii) prepared two comprehensive complaints
11 detailing Defendants’ violations of the federal securities laws; (iv) conducted exhaustive research
12 of the law applicable to the Settlement Class’s claims and the defenses thereto; (v) consulted
13 with various experts and consultants throughout the course of the Action; (vi) opposed two
14 rounds of briefing on Defendants’ motions to dismiss and a motion for partial judgment on the
15 pleadings; (vii) engaged in extensive discovery with Defendants and third-parties, including
16 obtaining and reviewing over 2.5 million pages of documents, preparing for and taking a
17 comprehensive Rule 30(b)(6) deposition of SunPower’s corporate designee on a variety of topics
18 relevant to Lead Plaintiffs’ allegations, litigating various motions to compel, and preparing
19 Letters Rogatory in order to obtain discovery of certain potential witnesses in the Philippines;
20 (viii) prepared and filed a motion for class certification supported by a detailed expert report; (ix)
21 considered the various risks of continued litigation; and (x) engaged in protracted settlement
22 negotiations with Defendants’ Counsel facilitated by an experienced mediator, Jed D. Melnick,
23 Esq. of JAMS, including a formal full day mediation session (which featured detailed
24 presentations by the parties on liability and damages), numerous telephonic mediation updates
25 and the exchange of lengthy mediation statements. Lead Counsel Decl. at ¶¶11, 23-24, 41, 44,
26 62-67, 95-100, 125.

27 In light of the considerable risks here, the Settlement is a favorable recovery for the
28 Settlement Class. Lead Plaintiffs faced substantial risks in establishing Defendants’ liability –

1 particularly the element of scienter, given that the alleged accounting misconduct that
2 precipitated SunPower's Restatement² occurred entirely within the Company's Philippines
3 manufacturing subsidiary, by Philippine accountants at the direction of Philippine personnel and,
4 as Defendants' would continue to argue going forward, was unknown to SunPower's top
5 management located in the United States. Lead Counsel Decl. at ¶139. In further support of
6 their argument, Defendants would point – as they repeatedly have – to the independent
7 investigation commissioned by SunPower's Audit Committee which found that SunPower's
8 senior management neither directed nor were aware of the accounting misconduct – conclusions
9 which were further verified and accepted by the Company's outside auditing firm and the SEC
10 which formally closed its investigation into the matter after determining not to initiate any
11 enforcement action. *Id.* Lead Plaintiffs also faced serious risks in proving the Settlement Class's
12 full amount of damages. *Id.* at ¶11.

13 Aside from these legal hurdles, there was no insurance available to fund a settlement or
14 satisfy a future judgment in this Action, and based on Lead Plaintiffs' independent review of the
15 Company's publicly-filed financial statements, and retention of an investment banker as a
16 valuation expert, it was Lead Plaintiffs' assessment that SunPower's cash position was
17 diminishing, resulting in at least a serious question as to whether Lead Plaintiffs would be able to
18 obtain a recovery for the Settlement Class in an amount materially greater than the Settlement
19 Amount, even if successful through motion practice, trial, and appeals. *Id.* at ¶¶103, 139. In
20 light of these risks, Lead Counsel respectfully submit that the Settlement is a testament to their
21 hard work and the quality of legal representation. Given the recovery obtained, the quantity of
22 the work involved during the 3-plus year pendency of the Action, the skill and expertise
23 required, and the substantial risks that Lead Counsel undertook in this Action, Lead Counsel
24 respectfully submit that the 25% fee request (the Ninth Circuit's "benchmark" fee award) is fair
25

26 ² On March 19, 2010, SunPower filed a restatement with the SEC which revealed that the
27 Company's previously reported financial results had been misstated for fiscal year ended
28 December 28, 2008, each quarterly period in 2008, and the first three quarters in fiscal year
2009, ended January 3, 2010 (hereinafter referred to as the "Restatement"). Lead Counsel Decl.
at ¶18.

1 and reasonable. This fee request is substantially less than the total lodestar value of the time that
 2 Lead Counsel have dedicated to the Action, representing a significant discount on the actual
 3 work performed by Lead Counsel through March 31, 2013 (*i.e.*, resulting in the application of a
 4 ***negative*** multiplier). Lead Counsel Decl. at ¶¶126-27. In addition, Lead Counsel submit that
 5 their request for reimbursement of Litigation Expenses in the amount of \$483,859.23, is both fair
 6 and reasonable and should be approved by the Court. *Id.* at ¶144.

7 This fee and expense request is made with the full approval of the Court-appointed Lead
 8 Plaintiffs, three sophisticated institutional investors who were directly involved in the
 9 prosecution and settlement of this Action. *See* Joint Declaration of Lead Plaintiffs in Support of
 10 Final Approval of Settlement and Lead Counsel's Application for an Award of Attorneys' Fees
 11 and Litigation Expenses ("Lead Plaintiffs' Declaration" or "Lead Plaintiffs' Decl."), attached as
 12 Exhibit A to the Lead Counsel Declaration, at ¶11. In addition, Notice of the proposed
 13 Settlement, including the maximum amount of attorneys' fees and Litigation Expenses that
 14 would be sought, was sent to over 89,000 potential Settlement Class Members and nominees.³
 15 The deadline to object to any aspect of the Settlement, including Lead Counsel's fee and expense
 16 request, expires on June 12, 2013. To date, not a single objection has been filed challenging the
 17 maximum request for attorneys' fees and Litigation Expenses set forth in the Notice.

18 **II. HISTORY OF THE ACTION**

19 Lead Counsel respectfully refer the Court to the accompanying Lead Counsel Declaration
 20 for a detailed description of the procedural history of the Action, the nature of the claims
 21 asserted, the investigation and discovery undertaken, the Settling Parties' extensive motion
 22

23 ³ The Notice of Pendency of Class Action and Proposed Settlement, Final Approval Hearing,
 24 and Motion for Attorneys' Fees and Reimbursement of Litigation Expenses (the "Notice")
 25 advises recipients that Lead Counsel will be applying to the Court for an award of attorneys' fees
 26 from the Settlement Fund in an amount not to exceed 25% of the Settlement Amount, net of
 27 Court-approved Litigation Expenses of Lead Counsel, and reimbursement of certain Litigation
 28 Expenses paid or incurred in connection with the prosecution and resolution of the Action in an
 amount not to exceed \$900,000, plus interest earned on both amounts at the same rate and for the
 same period as earned by the Settlement Fund. *See* Declaration of Stephanie A. Thurin Re
 Notice Dissemination and Publication (the "Thurin Decl."), submitted on behalf of the Court-
 authorized claims administrator for the Settlement, Epiq Systems, Inc. ("Epiq") attached to the
 Lead Counsel Decl. as Exhibit B, at ¶6.

1 practice, the negotiations and formal mediation process resulting in the Settlement and the risks
2 and uncertainties involved in prosecuting this Action through trial.

3 **III. THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE**

4 **A. A Reasonable Percentage Of The Fund Recovered** 5 **Is An Appropriate Approach To Awarding** 6 **Attorneys' Fees In Common Fund Cases**

7 In common fund cases, “a reasonable fee is based on a percentage of the fund bestowed
8 on the class.” *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). Courts have long held that “a
9 litigant or lawyer who recovers a common fund for the benefit of persons other than himself or
10 his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van*
11 *Gemert*, 444 U.S. 472, 478 (1980); *see also Trustees v. Greenough*, 105 U.S. 527 (1881).

12 To recover fees from a common fund, attorneys must demonstrate that their services were
13 of some benefit to the fund or enhanced the adversarial process. The Ninth Circuit has
14 specifically found that “those who benefit from the creation of the fund should share the wealth
15 with the lawyers whose skill and effort helped create it.” *In re Wash. Pub. Power Supply Sys.*
16 *Sec. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994); *see In re OmniVision Techs., Inc.*, 559 F. Supp.
17 2d 1036, 1046 (N.D. Cal. 2008). The common fund doctrine is also designed to prevent the
18 unjust enrichment of class members who benefit from a lawsuit without paying for it. *Boeing*,
19 444 U.S. at 478; *see also Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 271 (9th Cir.
20 1989); *IBEW Local 697 Pension Fund v. Int’l Game Tech., Inc.*, 2012 WL 5199742, at *4 (D.
21 Nev. Oct. 19, 2012) (“The common fund doctrine permits sharing of the burden of the litigation
22 expenses among those who are benefited by the litigation.”). Fee awards in meritorious cases
23 also promote private enforcement of, and compliance with, the federal securities laws which
24 “seek to maintain public confidence in the marketplace. They do so by deterring fraud, in part,
25 through the availability of private securities fraud actions.” *Dura Pharm., Inc. v. Broudo*, 544
26 U.S. 336, 345 (2005) (citation omitted); *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S.
308, 313 (2007).

27 Under the Private Securities Litigation Reform Act of 1995 (“PSLRA”), “Congress
28 plainly contemplated that percentage-of-recovery would be the primary measure of attorneys’

fees awards in federal securities class actions.” *See In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 586 (S.D.N.Y. 2008); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005). By its plain terms, the “PSLRA limits any award of attorneys’ fees and expenses to a ‘reasonable percentage’ of any recovery.” *In re Royal Ahold N.V. Sec. & ERISA Litig.*, 461 F. Supp. 2d 383, 385 (D. Md. 2006). The Ninth Circuit has also expressly approved the percentage method which has become the prevailing method for awarding fees in common fund cases in this Circuit. *See Glass v. UBS Fin. Servs., Inc.*, 331 Fed. Appx. 452, 456-57 (9th Cir. 2009) (unpubl.) (affirming 25% fee award, overruling objection based on use of percentage-of-the-fund approach); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Torrissi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376 (9th Cir. 1993); *Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F. 2d 1301, 1311 (9th Cir. 1990); *Graulty*, 886 F.2d at 272.

The percentage-of-recovery method most fairly correlates the compensation of counsel with the benefit conferred upon the class. *See OmniVision*, 559 F. Supp. 2d at 1046 (citing authorities that have “described thoroughly” the advantages of the percentage method). First, it closely aligns the lawyers’ interest in being paid a fair fee with the interest of the class in achieving the maximum possible recovery. Second, it decreases the burden imposed on courts by eliminating a detailed and time-consuming lodestar analysis and assuring the beneficiaries do not experience undue delay in receiving their share of the settlement. “Simply put, it is much easier and far less demanding of scarce judicial resources to calculate a percentage of the fund fee than to review hourly billing practices over a long, complex litigation.”⁴ The percentage-of-recovery method is also consistent with the practice in the private marketplace where contingent fee attorneys are customarily compensated by a percentage of the recovery. *See generally Mo. v. Jenkins*, 491 U.S. 274, 285 (1989).

⁴ *In re Copley Pharm., Inc.*, 1 F. Supp. 2d 1407, 1411 (D. Wyo. 1998); *see also In re WorldCom, Inc. Sec. Litig.*, 2004 WL 2591402, at *21 (S.D.N.Y. Nov. 12, 2004) (“[O]ne of the benefits of using the percentage-based method for assessing an award of attorneys’ fees is that it relieves a court of the need to undertake a mind-numbing detailed review of time records and removes some of the incentive to pad those records....”); *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1377-78 (N.D. Cal. 1989).

1 **B. The Requested Fee Percentage Is Reasonable**

2 District courts in this Circuit have discretion to apply either the percentage-of-recovery
 3 method or lodestar method in determining attorneys' fees in a common fund case. *Wash. Pub.*,
 4 19 F.3d at 1295; *see also Knight v. Red Door Salons, Inc.*, 2009 WL 248367, at *5 (N.D. Cal.
 5 Feb. 2, 2009). Although district courts retain discretion over which of the two methods to apply,
 6 the percentage-of-recovery method, as set forth above, is the prevailing method for awarding
 7 fees in common fund cases in this Circuit.⁵ Courts may also perform a lodestar cross-check on
 8 the reasonableness of the requested fee. *See Vizcaino*, 290 F.3d at 1047 (affirming use of
 9 percentage method in calculating fees and application of lodestar method as a cross-check); *West*
 10 *v. Circle K Stores, Inc.*, 2006 U.S. Dist. LEXIS 76558, at *21-22 (E.D. Cal. Oct. 20, 2006)
 11 (applying percentage method with lodestar cross-check). No matter which method is chosen, the
 12 fees awarded must be fair and reasonable under the circumstances of a particular case. *See*
 13 *Wash. Pub.*, 19 F.3d at 1295.

14 Courts in this Circuit also consider the following five factors to determine whether a fee
 15 is fair and reasonable: (1) the results achieved; (2) the risk of litigation; (3) the skill required and
 16 the quality of the work; (4) the contingent nature of the fee and the financial burden carried by
 17 the plaintiffs; and (5) awards made in similar cases.⁶ Lead Counsel respectfully submit that an
 18 analysis of the foregoing *Vizcaino* factors, as well as an analysis under the percentage-of-
 19 recovery and lodestar methods, demonstrates that the present fee request is reasonable and
 20 appropriate and should be approved by the Court.

21
 22
 23
 24 ⁵ *See Ariz. Citrus*, at 1311 ("a reasonable fee under the common fund doctrine is calculated as a
 25 percentage of the recovery"); *see also, e.g.*, Manual for Complex Litigation, Fourth, § 14.121 at
 187 (2004) (commenting that "the vast majority of courts of appeals now permit or direct district
 courts to use the percentage-fee method in common fund cases").

26 ⁶ *Vizcaino*, 290 F.3d at 1048-50. "The relative degree of importance to be attached to any
 27 particular factor will depend upon . . . the nature of the claim(s) advanced, the type(s) of relief
 sought, and the unique facts and circumstances presented by each individual case." *Atlas v.*
Accredited Home Lenders Holding Co., 2009 WL 3698393, at *3 (S.D. Cal. Nov. 4, 2009).

C. **Analyses Under The Percentage Method, The Lodestar Method
And The Vizcaino Factors Supports Lead Counsel's Fee Request**

1. **The Results Achieved When Viewed
In Light Of The Risks Of Litigation**

Courts have consistently recognized that the settlement achieved is an important factor to be considered in determining an appropriate fee award. *See OmniVision*, 559 F. Supp. 2d at 1046; *UBS*, 331 Fed. Appx. at 456-57; *In re DJ Orthopedics, Inc. Sec. Litig.*, 2004 WL 1445101, at *7 (S.D. Cal. Jun. 21, 2004). Here, through their extensive efforts during the pendency of this Action as detailed at length in the Lead Counsel Declaration, Lead Counsel obtained a \$19.7 million recovery for the Settlement Class. This Settlement confers a substantial and immediate benefit on the Settlement Class in contrast to the delays, costs and uncertainty of continued litigation. The \$19.7 million recovery is even more significant given the various risks involved in the Action. As detailed below and in the Lead Counsel Declaration, this Settlement was obtained not only in the face of certain legal challenges, but also the additional uncertainties regarding Defendants' ability to fund a future settlement or satisfy a judgment for more than the Settlement Amount. Lead Plaintiffs, aided by Lead Counsel, carefully considered these risks when negotiating the present Settlement, and that such a result was secured in the face of such risks evinces the significance of the Settlement.

2. **The Risks Of Litigation**⁷

In a case undertaken on a contingent fee basis, the risk of litigation is a key factor in determining an appropriate fee award. *See, e.g., OmniVision*, 559 F. Supp. 2d at 1047; *Wash. Pub.*, 19 F.3d at 1299-301; *In re Heritage Bond Litig.*, 2005 WL 1594389, at *14 (C.D. Cal. June 10, 2005) ("The risks assumed by Plaintiffs' Counsel, particularly the risk of non-payment or reimbursement of expenses is a factor in determining counsel's proper fee award."). While courts have always recognized that securities class actions carry significant risks, post-PSLRA

⁷ The risks of litigation are also detailed in the Lead Counsel Declaration (¶¶132-42) and discussed in Lead Plaintiffs' Notice of Motion and Motion for Final Approval of Class Action Settlement; Memorandum of Points and Authorities in Support Thereof ("Settlement Memorandum") submitted herewith.

1 rulings make it clear that the risk of no recovery has increased significantly since the PSLRA's
 2 enactment. *See In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000)
 3 ("securities actions have become more difficult from a plaintiff's perspective in the wake of the
 4 PSLRA"). Had the Action proceeded, there existed real uncertainties concerning liability,
 5 damages and ability of Lead Plaintiffs to recover on a substantial judgment.

6 **a) The Risks Of Proving Liability And Damages**

7 While Lead Counsel and Lead Plaintiffs continue to maintain that the claims have merit,
 8 they also recognize that Defendants possessed compelling arguments against Lead Plaintiffs'
 9 ability to prove Defendants' liability, particularly scienter and damages, at trial. Lead Counsel
 10 Decl. at ¶¶7, 139.

11 For example, Defendants vigorously asserted throughout the Action, and would continue
 12 to assert if the Action continued, that they did not act with the requisite scienter and that their
 13 actions did not cause the Settlement Class's losses. *See Churchill Vill., L.L.C. v. Gen. Elec.*, 361
 14 F.3d 566, 576 (9th Cir. 2004). With respect to scienter, Defendants would argue that the
 15 accounting misconduct that led to the Company's Restatement occurred entirely in the
 16 Philippines (*i.e.*, in SunPower's Philippine manufacturing subsidiary, by Philippine accountants
 17 and at the direction of Philippine personnel) and was completely unknown to SunPower's top
 18 management in the United States. Lead Counsel Decl. at ¶139. In further support, Defendants
 19 would point to, among other things: (i) the independent investigation commissioned by
 20 SunPower's Audit Committee (at a cost of more than \$8 million) which concluded that
 21 SunPower's senior management neither directed nor were aware of the accounting misconduct,
 22 and (ii) the SEC's decision not to initiate any enforcement action in connection with this matter.
 23 *Id.* Additionally, at the time the Settlement was reached, Defendants' motion for partial
 24 judgment on the pleadings was *sub judice*, and if successful, could have substantially narrowed
 25 the scope of the case. In their motion, Defendants argued that they were entitled to judgment on
 26 Lead Plaintiffs' claims based on forward-looking statements in the Complaint. Specifically,
 27 Defendants argued that the purported forward-looking statements were protected by the
 28 PSLRA's safe harbor provisions and that Lead Plaintiffs failed to plead that the forward-looking

1 statements were false. Defendants further argued that the alleged false statements were in fact
 2 “statements of corporate optimism” and not actionable as a matter of law. *Id.* at ¶89.

3 Lead Plaintiffs would also face substantial challenges in establishing the full amount of
 4 the Settlement Class’s damages.⁸ Lead Counsel Decl. at ¶5. Defendants raised certain defenses
 5 to damages in their Answer to the Complaint, including *inter alia*, that: (i) Lead Plaintiffs’
 6 damages, if any, resulted from the acts and omissions of third parties – constituting intervening
 7 or superseding causes of harm; (ii) Lead Plaintiffs’ damages, if any, are subject to offset in the
 8 amount of any benefit received by Lead Plaintiffs through their investments, including but not
 9 limited to any tax, insurance, or indemnification benefit; (iii) Lead Plaintiffs suffered no harm
 10 and incurred no damages due to the fact that their investments in SunPower Securities were
 11 hedged; and (iv) Lead Plaintiffs failed to mitigate, reduce, or otherwise avoid the damages, and
 12 are therefore barred from recovering such damages, if any.⁹ *Id.* at ¶103(c).

13 Indeed, the Settling Parties’ arguments on causation and damages would have ultimately
 14 hinged upon extensive expert discovery and testimony. As the Court is doubtless aware, one
 15 should never comfortably predict how a jury or court will ultimately weigh the testimony of
 16 competing experts. *See In re Cendant Corp. Litig.*, 264 F.3d 201, 239 (3d Cir. 2001)
 17 (“establishing damages at trial would lead to a ‘battle of experts’...with no guarantee whom the
 18 jury would believe”). Lead Counsel have sufficient experience to recognize that a trier of fact
 19 could be swayed by Defendants’ expert, who would undoubtedly seek to minimize or eliminate
 20 the amount of the Settlement Class’s damages by showing that the losses were attributable to
 21 factors other than the alleged misstatements and omissions, potentially limiting substantially, or
 22

23
 24 ⁸ Lead Plaintiffs would be required to prove that the alleged false and misleading statements
 25 attributed to Defendants artificially inflated the price of SunPower publically traded securities
 26 (*i.e.*, SunPower’s Class A common stock, Class B common stock and 4.75% Senior Convertible
 27 Debentures (collectively, the “SunPower Securities”)) during the Settlement Class Period, and
 28 that once these allegedly false statements were corrected, the prices of SunPower Securities
 dropped, damaging Lead Plaintiffs and the Settlement Class. *See Dura*, 544 U.S. at 341-42.
 Lead Plaintiffs would also be required to prove the amount of the artificial inflation.

⁹ *See* Defendants’ Answer to First Amended Consolidated Class Action Complaint filed
 January 27, 2012 (ECF No. 182).

1 completely, Lead Plaintiffs' ability to prove damages. Lead Counsel Decl. at ¶¶101, 102(d),
 2 136, 140.

3 **b) Ability To Pay Considerations**

4 In addition to the risks of proving liability and damages set forth above, Lead Plaintiff
 5 assessed that there were ability to pay issues. Lead Counsel Decl. at ¶¶7, 10, 79, 98, 102(f), 138.
 6 During the Settling Parties' settlement negotiations, Defendants represented that there was no
 7 insurance available to fund a settlement or satisfy a future judgment in the Action, and it was
 8 Lead Plaintiffs' assessment based on review of the Company's publicly-filed financial position
 9 that SunPower's cash position was diminishing. *Id.* at ¶¶7, 103(f), 139. In addition, Lead
 10 Plaintiffs retained an investment banker to serve as a valuation expert regarding SunPower's
 11 financial condition. *Id.* at ¶¶24, 102(f). Lead Plaintiffs were also mindful of the challenges
 12 facing the solar industry. Thus, Lead Plaintiffs knew that, even if they were entirely successful,
 13 even after trial and appeals, they may actually recover substantially less than the amount
 14 obtained in this Settlement for the benefit of the Settlement Class, or nothing at all. *See, e.g., In*
 15 *re Immune Response Sec. Litig.*, 497 F. Supp. 2d 1166, 1175-76 (S.D. Cal. 2007) ("Risk is also a
 16 relevant factor in addressing the proposed fee award....[T]his case involved complex issues of
 17 both fact and law, which were highly disputed by Parties. Additionally, Plaintiffs claim that
 18 prolonging a resolution of the case would increase the risk that the funds available for a
 19 judgment would be depleted due to litigation expenses.").

20 These risks facing Lead Plaintiffs, the Settlement Class – and Lead Counsel – further
 21 support the requested fee.

22 **3. The Skill Required And**
 23 **The Quality Of Representation**

24 The skill and quality of legal counsel also support the requested fee award. *See Mark v.*
 25 *Valley Ins. Co.*, 2004 U.S. Dist. LEXIS 20602, at *4 (D. Or. Oct. 6, 2004). "The 'prosecution
 26 and management of a complex national class action requires unique legal skills and abilities.'
 27 This is particularly true in securities cases because the [PSLRA] makes it much more difficult for
 28 securities plaintiffs to get past a motion to dismiss." *OmniVision*, 559 F. Supp. 2d at 1047; *see*

1 *also Heritage Bond*, 2005 WL 1594403, at *12. Lead Counsel are among the nation's most
 2 experienced and skilled practitioners in the securities litigation field, and each firm has
 3 successfully litigated these types of cases on behalf of major institutional investors throughout
 4 the country – including within this Circuit.¹⁰ Given the complexity of the issues presented in this
 5 Action, it is Lead Counsel's opinion that highly skilled counsel was required to successfully
 6 represent the Settlement Class and obtain such a favorable recovery.

7 From the outset, Lead Counsel engaged in a concerted effort to obtain the maximum
 8 recovery for the Settlement Class. As detailed in the Lead Counsel Declaration, through Lead
 9 Counsel's persistent work, Lead Plaintiffs were able to plead detailed allegations based on their
 10 extensive investigation and develop a convincing case, including by obtaining and reviewing
 11 millions of pages of documents from Defendants and third-parties and consulting extensively
 12 with experts and consultants at various stages throughout the Action. Lead Counsel's extensive
 13 efforts and skill leading to the Settlement strongly support the requested percentage fee.

14 The quality of opposing counsel is also important in evaluating the quality of the services
 15 rendered. *See In re Equity Funding Corp. of Am. Sec. Litig.*, 438 F. Supp. 1303, 1337 (C.D. Cal.
 16 1977) (recognizing that "plaintiffs' attorneys in this class action have been up against established
 17 and skillful defense lawyers, and should be compensated accordingly"). In this Action, the
 18 SunPower Defendants are represented by a highly experienced and skilled defense firm,

19
 20
 21
 22 ¹⁰ *See, e.g., In re McKesson HBOC, Inc. Sec. Litig.*, 99-CV-20743 RMW (N.D. Cal.) (successful
 23 recovery of over \$1.04 billion); *In re Maxim Integrated Prods., Inc. Sec. Litig.*, 08-00832-JW
 24 (N.D. Cal.) (\$173 million); *In re Connetics Sec. Litig.*, 07-02940 SI (N.D. Cal.)
 25 (\$12.75 million); *In re New Century*, 07-cv-00931 (FMOx) (C.D. Cal.) (\$125 million); *In re*
 26 *Int'l Rectifier Corp. Sec. Litig.*, 07-02544-JFW (C.D. Cal.) (\$90 million); *In re Gemstar-TV*
 27 *Guide Int'l Inc. Sec. Litig.*, 02-CV-2775-MRP (C.D. Cal.) (\$92.5 million); *In re Wells Fargo*
 28 *Mortgage-Backed Certificates Litig.*, 09-cv-01376-LHK (N.D. Cal.) (\$125 million); *In re Tenet*
Healthcare Corp. Sec. Litig., CV 02-8462-RSWL (C.D. Cal.) (\$281.5 million); *In re: Brocade*
Sec. Litig., 05-CV-02042-CRB (N.D. Cal.) (\$160 million); *In re Marvell Tech. Group Ltd. Sec.*
Litig., 06-cv-6286 RMW (N.D. Cal.) (\$72 million); *In re 3Com Sec. Litig.*, 97-cv-21083 (N.D.
 Cal.) (\$259 million); *In re Informix Corp. Sec. Litig.*, 97-cv-1289 (N.D. Cal.) (\$136.5 million);
see also Firm Resumes, previously submitted as ECF Nos. 32-5, 32-6 and 32-7.

Morrison & Foerster LLP, which spared no effort in the defense of its clients' claims.¹¹ Defendants' Counsel vigorously defended their clients and, in the face of this formidable opposition, Lead Counsel developed their case so as to persuade Defendants to agree to a favorable financial recovery for the Settlement Class.

4. **The Contingent Nature Of The Fee And The Financial Burden Carried By Lead Counsel**

It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases. Contingent fees that may far exceed the market value of the services rendered on a non-contingent basis are accepted in the legal profession as a legitimate way of assuring competent representation for plaintiffs who could not afford to pay on an hourly basis regardless of whether they win or lose.¹²

Here, Lead Counsel have received no compensation during the course of this 3-plus year litigation – investing, through March 31, 2013, a total of 15,940.44 hours for an aggregate lodestar of \$8,301,244.25 (nearly twice the amount of the fee request), and expending hundreds of thousands of dollars to pay for expenses incurred in connection with prosecuting and resolving this case.¹³ Moreover, although not included in the lodestar figure, Lead Counsel have expended

¹¹ Additional defendants in this Action were also represented by highly experienced and skilled defense firms - the underwriter defendants were represented by Shearman & Sterling LLP, and defendant Trinidad was represented by Sidley Austin, LLP. Lead Counsel Decl. at ¶131.

¹² *Wash. Pub.*, 19 F. 3d at 1299-300. *See also IBEW*, 2012 WL 5199742, at *4 (“Plaintiffs’ counsel shouldered the risk of non-payment by taking the class action suit on a contingency fee basis. ‘It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases.’”) (citation omitted); *Immune Response*, 497 F. Supp. 2d at 175-76; *OmniVision*, 559 F. Supp. 2d at 1047.

¹³ *See* Lead Counsel Decl. at ¶133; *see also* Declaration of David R. Stickney of Bernstein Litowitz Berger & Grossmann LLP in Support of Lead Counsel’s Application for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (the “Stickney Decl.”), Declaration of Laurence D. King of Kaplan Fox & Kilsheimer, LLP in Support of Lead Counsel’s Application for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (the “King Decl.”), and Declaration of David Kessler of Kessler Topaz Meltzer & Check, LLP in Support of Lead Counsel’s Application for an Award of Attorneys’ Fees and Reimbursement of Litigation Expenses (the “Kessler Decl.”), attached as Exhibits C-1 through C-3 to the Lead Counsel Declaration, respectively.

1 additional time in connection with the Settlement since March 31, 2013, and will continue to
 2 perform legal work on behalf of the Settlement Class and spend additional resources assisting
 3 Settlement Class Members with their Proofs of Claim and related inquiries and working with the
 4 claims administrator to ensure the smooth progression of claims processing. Lead Counsel Decl.
 5 at ¶127 n.15.

6 In addition, Lead Counsel have borne all the risk of this Action – including the risks of
 7 surviving dispositive motions, obtaining class certification, adequately pleading liability and
 8 litigating the Action through an appeal. Lead Counsel understood from the outset that they were
 9 embarking on a complex, expensive and lengthy litigation, which would require the investment
 10 of hundreds of thousands of dollars and thousands of hours of attorney time, with no guarantee
 11 of ever being compensated. Lead Counsel also understood that the defendants would (and, in
 12 fact, did) retain large, highly experienced corporate defense firms to mount strong defenses. In
 13 undertaking this risk, Lead Counsel were obligated to assure that sufficient resources were
 14 dedicated to the prosecution of this Action. Lead Counsel Decl. at ¶133.

15 “[T]he risk of non-payment in complex cases [such as this] is very real.” *In re Veeco*
 16 *Instruments Sec. Litig.*, 2007 WL 4115808, at *6 (S.D.N.Y. Nov. 7, 2007). The commencement
 17 of a class action is no guarantee of success; these cases are not always settled, nor are plaintiffs’
 18 lawyers always successful. Indeed, there have been numerous hard-fought lawsuits where,
 19 because of discovery of facts unknown when the case was commenced, or changes in the law
 20 during the pendency of the case, or a decision of a judge or jury following a trial on the merits,
 21 excellent professional efforts of members of the plaintiffs’ bar produced no fee to plaintiffs’
 22 counsel.¹⁴ Thus, there existed a real risk that Lead Counsel (and the Settlement Class) would
 23

24 ¹⁴ See, e.g., *In re Omnicom Grp., Inc. Sec. Litig.*, 597 F.3d 501 (2d Cir. 2010) (affirming
 25 summary judgment in favor of defendant on loss causation grounds); see also *In re BankAtlantic*
 26 *Bancorp, Inc. Sec. Litig.*, 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011) (granting defendants’
 27 judgment as a matter of law following plaintiff verdict); *In re Apple Computer Sec. Litig.*, 1991
 28 WL 238298 (N.D. Cal. Sept. 6, 1991) (after the jury rendered a verdict for plaintiffs after an
 extended trial, the court overturned the verdict); *Robbins v. Koger Properties, Inc.*, 116 F.3d
 1441 (11th Cir. 1997) (jury verdict of \$81 million for plaintiffs against an accounting firm
 reversed on appeal); *Anixter v. Home-Stake Prod. Co.*, 77 F.3d 1215 (10th Cir. 1996)

invest substantial resources and efforts and receive nothing. Any fee award has always been at risk, and completely contingent on the result achieved and on this Court's discretion in awarding fees and expenses.

5. Awards In Similar Cases

The Ninth Circuit recognizes 25% of a fund recovered for the benefit of a class as the "benchmark" for fee awards in common fund cases. *See UBS*, 331 Fed. Appx. at 457; *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) (referring to 25% in attorneys' fees as a "benchmark award"). Indeed, "in most common fund cases, the award exceeds that benchmark."¹⁵

Ultimately, ample precedent exists in this Circuit for granting fees to plaintiff's counsel that are equal to or greater than the fees requested herein which confirms the requested 25% fee's reasonableness. *See, e.g., In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 460 (9th Cir. 2000) (affirming award of one-third of the total recovery); *In re Webkinz Antitrust Litig.*, Case No. M 08-cv-01987-RS, ECF No. 159 (N.D. Cal. Sept. 17, 2012) (approving 30% fee award); *Johnson v. Aljian*, Case No. CV 03-5986 DMG (PJWx), ECF No. 283 (C.D. Cal. Sept. 16, 2010) (approving 33⅓% fee award); *In re Wireless Facilities, Inc. Sec. Litig.*, Master File. No. 04cv1589 NLS, ECF No. 192 (S.D. Cal. Jan. 13, 2009) (approving 25% fee award); *Jenson v. First Trust Corp.*, 2008 U.S. Dist. LEXIS 45078, at *10 (C.D. Cal. June 9, 2008) (approving 33% fee award); *In re Avista Corp. Sec. Litig.*, No. CV-02-0328-FVS, ECF No. 456 (E.D. Wash. Dec. 20, 2007) (approving 30% fee award); *Immune Response*, 497 F. Supp. 2d at 1172 (approving 25% award); *In re CV Therapeutics, Inc., Sec. Litig.*, 2007 WL 1033478, at *1 (N.D. Cal. Apr. 4, 2007) (approving 30% fee award); *In re Amerco Sec. Litig.*, No. Civ-04-2182-PHX-

(overturning securities class action jury verdict for plaintiffs case filed in 1973 and tried in 1988).

¹⁵ *OmniVision*, 559 F. Supp. 2d at 1047-48 (approving fee award of 28%); *see also Vizcaino*, 290 F. 3d at 1048-50 (affirming fee award of 28%); *Heritage Bond*, 2005 WL 1594403, at *18 n.12 (awarding fee award of 33⅓% because "courts in this circuit, as well as other circuits, have awarded attorneys' fees of 30% or more in complex class actions"); *see IBEW*, 2012 WL 5199742, at *2 ("the benchmark should be thirty percent rather than the twenty-five percent recommended"); *Immune Response*, 497 F. Supp. 2d at 1175-76 ("a proposed fee of 25% is consistent, if not below, the average award in similar complex actions").

RJB, ECF No. 290 (D. Ariz. Nov. 3, 2006) (approving 30% fee award); *Circle K Stores*, 2006 U.S. Dist. LEXIS 76558, at *29 (approving 25% fee award); *In re Ligand Sec. Litig.*, Master File No. 04-CV-1620-DMS (CAB), ECF No. 98 (S.D. Cal. Oct. 16, 2006) (approving 25% fee award). Lead Counsel's present fee request is therefore consistent with, and in many cases lower than, fee award percentages granted in this Circuit.

6. **An Analysis Of Lead Counsel's Lodestar Supports The Requested Fee Award**

A cross-check of the requested fee with Lead Counsel's lodestar further demonstrates the proposed fee's reasonableness. *See Vizcaino*, 290 F.3d at 1048-50; *In re Petroleum Prods. Antitrust Litig.*, 109 F.3d 602 (9th Cir. 1997); *Heritage Bond*, 2005 WL 1594403, at *22. As detailed herein and in the accompanying Lead Counsel Declaration, the work undertaken by Lead Counsel wholly supports the Court's approval of the present fee request. Through March 31, 2013, Lead Counsel devoted 15,940.44 hours to this Action, amounting to \$8,301,244.25 in billable time. *See* Ex. C-4 to Lead Counsel Decl.; *see also* Stickney Decl. at Ex. 1; King Decl. at Ex. 1; and Kessler Decl. at Ex. 1. As a result, Lead Counsel's fee request of \$4,804,035.19 (25% of the \$19.7 million Settlement Amount, net of Court-approved Litigation Expenses) amounts to substantially less than the straight time Lead Counsel spent on this case, without any augmentation. In other words, Lead Counsel's request for attorneys' fees reflects a substantial discount on the time Lead Counsel actually spent litigating the matter and results in a *negative* multiplier. Lead Counsel Decl. at ¶15, 126-27.¹⁶ This fact militates in favor of the reasonableness of the present fee request, as courts have recognized that the reasonableness of

¹⁶ As courts in this jurisdiction often award multipliers in the 1-4 range, this Court should find that the lodestar cross-check underscores the reasonableness of the fee application. *See, e.g., Buccellato v. AT&T Operations, Inc.*, 2011 WL 3348055, at *1-2 (N.D. Cal. June 30, 2011) (awarding 25% fee, representing a multiplier of 4.3); *In re Brocade Sec. Litig.*, Consolidated Case No. 05-CV-02042-CRB, slip op at 13 (N.D. Cal. Jan. 26, 2009) (awarding 25% fee representing a multiplier of 3.5); *In re Broadcom Corp. Sec. Litig.*, 2005 U.S. Dist. LEXIS 41993, at *16 (C.D. Cal. Sept. 12, 2005) (applying 1.64 multiplier to current billing rates and noting that "[t]his multiplier is in the bottom range approved by courts"); *In re Veritas Software Corp. Sec. Litig.*, 2005 WL 3096079, at *13 (N.D. Cal. Nov. 15, 2005) (applying 4.0 multiplier where motion to dismiss was pending and no formal discovery taken).

the fee request under the percentage method “is reinforced by evidence that the percentage fee would represent a negative multiplier of the lodestar.” *In re Blech Sec. Litig.*, 2000 WL 661680, at *5 (S.D.N.Y. May 19, 2000); *see In re Portal Software, Inc. Sec. Litig.*, 2007 WL 4171201, at *16 (N.D. Cal. Nov. 26, 2007) (negative multiplier suggests a percentage-based award is fair and reasonable).

D. The Reaction Of The Settlement Class To Date Supports The Fee Request

This fee and expense request is made with the full approval of the Court-appointed Lead Plaintiffs, three sophisticated institutional investors who were directly involved in the prosecution and settlement of this Action. *See* Lead Plaintiffs’ Decl. at ¶10. In addition, the reaction to date of the other members of the Settlement Class supports the fee request. *See Red Door Salons*, 2009 WL 248367, at *4; *Immune Response*, 497 F. Supp. 2d at 1177. Here, beginning on April 8, 2013, notice of the proposed Settlement was mailed to over 89,000 potential Settlement Class Members and nominees, advising that Lead Counsel would be requesting an award of attorneys’ fees from the Settlement Fund in an amount not to exceed 25% of the Settlement Amount, net of Court-approved Litigation Expenses of Lead Counsel, and reimbursement of certain Litigation Expenses paid or incurred in connection with the prosecution and resolution of the Action in an amount not to exceed \$900,000, plus interest earned on both amounts at the same rate and for the same period as earned by the Settlement Fund. Lead Counsel Decl. at ¶¶106, 143. In addition, the Summary Notice was published in the national edition of *Investor’s Business Daily* and transmitted over the *PR Newswire*. *Id.* at ¶143; *see also* Thurin Decl. at ¶13. While the deadline for filing an objection to Lead Counsel’s fee request does not expire until June 12, 2013, to date, no Settlement Class Member has filed an objection to the maximum amount of attorneys’ fees and Litigation Expenses set forth in the Notice. Lead Counsel Decl. at ¶143.¹⁷

¹⁷ As stated above, if any objections are received following this submission, Lead Counsel will address them in their reply brief to be filed with the Court on or before June 26, 2013.

1 **IV. LEAD COUNSEL ARE ENTITLED TO REIMBURSEMENT**
 2 **FOR THEIR REASONABLE LITIGATION EXPENSES**

3 Lead Counsel also request reimbursement of Litigation Expenses in the amount of
 4 \$483,859.23, incurred in connection with the prosecution and resolution of the Action on behalf
 5 of the Settlement Class, plus interest on such amount at the same rate as earned by the Settlement
 6 Fund. Lead Counsel Decl. at ¶145. Attorneys who create a common fund for the benefit of a
 7 class are entitled to be reimbursed for their out-of-pocket expenses incurred in creating the fund
 8 so long as the submitted expenses are reasonable, necessary and directly related to the
 9 prosecution of the action. *See OmniVision*, 559 F. Supp. 2d at 1048 (“Attorneys may recover
 10 their reasonable expenses that would typically be billed to paying clients in non-contingency
 11 matters.”). “Reasonable costs and expenses incurred by an attorney who creates or preserves a
 12 common fund are reimbursed proportionately by those class members who benefit by the
 13 settlement.” *In re Media Vision Tech. Sec. Litig.*, 913 F. Supp. 1362, 1366 (N.D. Cal. 1995).

14 From the beginning of the case, Lead Counsel were aware that they might not recover
 15 any of their expenses, and, at the very least, would not recover anything until the Action was
 16 successfully resolved. Lead Counsel Decl. at ¶146. Lead Counsel also understood that, even
 17 assuming that the case was ultimately successful, reimbursement for expenses would not
 18 compensate them for the lost use of the funds advanced to prosecute the Action. *Id.* Thus, Lead
 19 Counsel were motivated to, and did, take significant steps to minimize expenses wherever
 20 practicable without jeopardizing the vigorous and efficient prosecution of the Action. *Id.*

21 The types of expenses for which Lead Counsel seek reimbursement are necessarily
 22 incurred in litigation and routinely charged to clients billed by the hour. Lead Counsel Decl. at
 23 ¶147. As set forth in the sworn declarations submitted by Lead Counsel, these expenses include,
 24 among others, payments to experts and consultants; document management related services;
 25 computer research devoted to this case; costs incurred for travel; charges for photocopying;
 26 telephone, postal and express mail charges; and similar case-related costs. *Id.* at ¶¶148-52; *see*
 27 *also* Stickney Decl. at ¶7, Ex. 2; King Decl. at ¶7, Ex. 2; Kessler Decl. at ¶7, Exs. 2-3. These
 28

1 expense items are billed separately by Lead Counsel, and such charges are not duplicated in their
2 billing rates. *Id.*¹⁸

3 As detailed in the Stickney, King, and Kessler Declarations, a large portion of Lead
4 Counsel's expenses reflect: (i) payments to experts and consultants (*i.e.*, \$233,879.27, or nearly
5 half of the total amount of expenses); (ii) document management system and database costs¹⁹
6 (*i.e.*, \$25,964.55); (iii) online legal and factual research (*e.g.*, *LexisNexis* and *Westlaw*) vital to
7 Lead Plaintiffs' investigation and analysis of the Settlement Class's claims (*i.e.*, \$110,500.00);
8 (iv) travel (*i.e.*, \$37,848.66); and (v) outside international investigative services (*i.e.*, 23,614.99).
9 Lead Counsel Decl. at ¶¶148-52; *see also* Stickney Decl. at Ex. 2; King Decl. at Ex. 2; Kessler
10 Decl. at Exs. 2-3.²⁰ These expenses were critical to Lead Counsel's success in achieving the
11 proposed Settlement. Lead Counsel Decl. at ¶154. To date, no objections have been received
12 regarding the maximum expense number set forth in the Notice. Lead Counsel Decl. at ¶155.
13 Accordingly, Lead Counsel respectfully request reimbursement of their out-of-pocket or incurred
14 expenses in the amount of \$483,859.23, plus interest.

15 \\\

16 \\\

17 \\\

18 \\\

19 \\\

21 ¹⁸ Lead Counsel maintained strict control over the Litigation Expenses. Indeed, many of the
22 Litigation Expenses were paid out of a litigation fund created by Lead Counsel and maintained
23 by KTMC (the "Litigation Fund"). Lead Counsel collectively contributed \$246,000.00 to the
24 Litigation Fund. A description of the payments from the Litigation Fund by category is set forth
25 in the individual firm declaration submitted on behalf of KTMC (Exhibit C-2). Currently, a
26 balance of \$3,428.70 remains in the Litigation Fund. This amount has been credited to KTMC
27 and removed from its expense request so as to avoid any double counting of expenditures. *See*
28 KTMC Decl. at ¶9.

¹⁹ A document management system and database was necessary in order to effectively and
efficiently review and analyze the more than 2.5 million pages of documents produced by
Defendants and third-parties. Lead Counsel Decl. at ¶149.

²⁰ *See* Exhibit C-4 to the Lead Counsel Declaration for a summary of Lead Counsel's expenses.

1 **V. CONCLUSION**

2 With no assurance of success and in the face of substantial risks, Lead Plaintiffs and Lead
 3 Counsel pursued the Action and have successfully obtained a \$19.7 million cash recovery for the
 4 benefit of the Settlement Class. For the reasons set forth herein, Lead Counsel respectfully
 5 request that the Court award: (i) attorneys' fees of 25% of the Settlement Amount, net of Court-
 6 approved Litigation Expenses, plus interest; and (ii) reimbursement of \$483,859.23 in Litigation
 7 Expenses incurred by Lead Counsel in connection with the prosecution and resolution of this
 8 Action, plus interest.

9 Dated: May 15, 2013

Respectfully Submitted,

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